

## **REMARKS**

Claims 61-63, 65, 66, 77, 79-81, 86, 91, 93-101 and 104-116 are pending and under examination.

Applicants gratefully acknowledge the Office's withdrawal of the rejection of claims 61-63, 65-66, 79-81, 86-87, 91, 94, 101, and 114-115 under 35 U.S.C. 112, first paragraph; the Office's withdrawal of the rejection of claims 77, 79-81, 86-87, 91, 93-95, and 104-113 under 35 U.S.C. 112, first paragraph; and the Office's withdrawal of the rejection of claims 61-63, 65-66, 79-81, 86-87, 91, 94, and 101, and 114-115 under 35 U.S.C. 112, first paragraph.

### ***Summary of Telephonic Interview Conducted 31 July 2012***

Applicants wish to thank Examiner Archie and Examiner Nickol for scheduling time to discuss this Application. Applicants' representative, Tyler Sisk, participated in a telephonic interview to discuss the outstanding Office Action and a draft response to the same in an effort to put the Application in condition for allowance.

#### **I. Nonstatutory Obviousness-Type Double Patenting Rejections**

The Office has rejected claims 61, 77, 79, 93 and 95 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-7, 9-12, and 14-19 of U.S. Patent No. 6,610,293; rejected claims 61, 101 and 104-116 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-6, 9-12, and 14-19 of U.S. Patent No. 6,610,293; and has rejected claims 77, 79-81, 86-87, 93, 101, and 104-116 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1,20-21,23,27,47,49,51-54,56, 76, and 78 of U.S. Patent No. 7,511,122.

Applicants respectfully disagree with each rejection.

Nonetheless, in order to further Applicant's business interests and the prosecution of the application, Applicants file concurrently herewith, in compliance with 37 C.F.R. 1.321(c) and 1.321(d), a Terminal Disclaimer via eTerminal Disclaimer in EFS-Web. Applicants respectfully submit that the filing of the Terminal Disclaimer renders each of the nonstatutory obviousness-type double patenting rejections moot.

## **II. The Claims Are Enabled and Supported by an Adequate Written Description**

The Office rejected claims 61-63, 65-66, 79-81, 91 and 116 under 35 U.S.C. 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

### ***Written Description***

The Office states that "The claim recites the phrase 'monoclonal antibody, wherein the antibody binds to the same epitope to which MAB 96-110 antibody binds.' Applicant did not file an explanation in the Applicants Arguments/Remarks on August 25, 2011 stating support for the recitation set forth supra, there is no support provided in the in the written description of the specification." (Office Action page 5).

Applicants respectfully point out that the Specification provides clear and ample written description support for the subject matter of the pending claims. In particular, an ordinary artisan finds literal support within the Specification (in the published application, U.S. Patent Publication No. 2004/0013673 A1 published 22 January 2004), at paragraph s 60-64 and Example 6; paragraph 69 and Examples 8 and 10 and Figure 10; and paragraphs 65-67, and in Examples 2, 3, 11 and 12, among other places. As such, Applicants respectfully assert that the Specification clearly describes the claimed invention to an ordinary artisan.

### ***Enablement***

The Office also rejected claims 61-63, 65-66, 79-81, 91 and 116 under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement requirement. The Office states that "The claims(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention."

The Office indicates that "Although the ATCC Accession No. is stated in the claims the claimed invention does not provide sufficient enablement for the claimed 'isolated monoclonal antibody' as recited in claims aforementioned above because an affidavit or declaration has not been filed. The deposit of biological organisms is considered by the Examiner to be necessary for

the enablement of the current invention (see 37 CFR 1.808(a)). Therefore said deposits are not in full compliance with 37 CFR 1.803-1.809." (Office Action page 6).

First, Applicants respectfully point out that the Specification does indeed provide the proper identifying information as required by 37 CFR 1.809(d) within the text of the Specification. In particular, paragraph 92 of the published Application, U.S. Patent Publication No. 2004/0013673, recites the following:

"[0092] Hybridoma 96-110 was deposited at the ATCC on Jun. 13, 1997 under Accession No. HB-12368."

Second, with regard to the Office's statement regarding the deposit of biological organism considered by the Office to be necessary for the enablement of the current invention in accordance with 37 CFR 1.808(a), Applicants hereby state the following:

- a) Access to ATCC deposit Accession No. HB-12368 will be afforded to one determined by the Commissioner to be entitled thereto during the pendency of the application;
- b) All restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent;
- c) The deposits will be maintained for a term of at least thirty (30) years from the date of the deposit or for the enforceable life of the patent or for a period of at least five (5) years after the most recent request for the furnishing of a sample of the deposited material, whichever is longest;
- d) The deposit will be replaced should it become necessary due to inviability, contamination or loss of capability to function in the manner described in the specification; and
- e) Applicants submit herewith Appendix A, a copy of the Certificate of Deposit of ATCC Accession No. HB -12368, dated 22 June 1997, indicating that the viability of the culture was tested on 20 June 1997, and on said date, the culture was viable.

Accordingly, Applicants respectfully assert that the claims are enabled in accordance with 37 CFR 1.801-1.809.

### **CONCLUSION**

For the reasons set forth above, it is respectfully submitted that Applicants have addressed all grounds for rejection and Applicants' claims should be passed to allowance. Reconsideration of the application is respectfully requested. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicants encourages the Examiner to call the undersigned collect at (608) 662-1277.

Respectfully submitted,

Dated: 31 July 2012

/Tyler J. Sisk/  
Tyler J. Sisk  
Registration No. 59,850  
CASIMIR JONES, S.C.  
2275 Deming Way Suite 310  
Middleton, Wisconsin 53562  
608.662.1277